

ATTACHMENT 1

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
THE MCCONNELL FOUNDATION
FOR EXCHANGE OF WATER

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THIS CONTRACT is made this ____ day of _____, 2000, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto, particularly Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197), commonly known and referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and THE MCCONNELL FOUNDATION, a California non-profit corporation, hereinafter referred to as the Contractor.

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, Reclamation is constructing and operating the Central Valley Project (CVP), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their

1 tributaries; and

2 WHEREAS, the Contractor is an 85 percent shareholder of Townsend Flat Water Ditch
3 Company (Townsend), a California corporation acting as a mutual water company, which holds a pre-
4 1914 right to divert water from Clear Creek, at McCormick-Saeltzer Dam (Saeltzer Dam), which is
5 owned and operated by Townsend; and

6 WHEREAS, in 1960, Reclamation and Townsend entered into an Agreement to resolve
7 Townsend's protest of Reclamation's application to appropriate water from Clear Creek for storage in
8 Whiskeytown Reservoir (Settlement Agreement), a component of the Trinity River Division of the
9 Central Valley Project, in which Reclamation agreed not to interfere with Townsend's right to divert up
10 to 55 ft³/s of the natural flow of Clear Creek measured near the Igo Bridge; and

11 WHEREAS, in order to resolve a fish passage problem at Saeltzer Dam in accordance
12 with Section 3406(b)(12) and the general authority of Section 3406(b)(1) of the Central Valley Project
13 Improvement Act of October 30, 1992 (106 Stat. 4706), Reclamation, Townsend, and California
14 Department of Fish and Game entered into an Agreement, dated
15 _____, 2000, which provides for the removal of Saeltzer Dam and the related
16 modification of Townsend's existing right to divert water from Clear Creek pursuant to the terms and
17 conditions of this contract and the related contract with the Centerville Community Services District, the
18 other Townsend shareholder; and

19 NOW THEREFORE, in consideration of the mutual and dependent covenants
20 herein contained, it is hereby mutually agreed between the parties hereto as follows:

1 DEFINITIONS

2 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
3 with the intent hereof, the term:

4 (a) "Calendar Year" shall mean the period January 1 through December 31,
5 both dates inclusive.

6 (b) "Substitute Water" shall mean the CVP water made available to the
7 Contractor for diversion at the points of delivery specified herein.

8 (c) "Year" shall mean the period from and including March 1 of each Calendar
9 Year through the last day of February of the following Calendar Year.

10 EFFECTIVE DATE OF CONTRACT

11 2. This contract shall be effective on the date first herein written and shall remain in
12 effect unless mutually agreed to in writing by Reclamation and the Contractor.

13 SUBSTITUTE WATER TO BE MADE AVAILABLE

14 3. (a) In exchange for the Contractor agreeing to the termination of the Settlement
15 Agreement and its commitment not to exercise any right or claim of right to divert water from Clear
16 Creek at the Saeltzer Dam, Reclamation shall make available to the Contractor, for no monetary charge
17 for the Substitute Water or the use of CVP facilities, 5,100 acre-feet of Substitute Water each Year as
18 requested and scheduled by the Contractor as provided in
19 Section 4 herein, for use by the Contractor and/or its designee(s) within the portion of Shasta County
20 that is within the permitted place of use for CVP water and in accordance with the terms and conditions
21 of this contract, and applicable State and Federal laws. The Contractor's designation of one or more

1 persons or entities as designees under this subsection shall not be deemed an assignment or transfer of
2 Substitute Water requiring Reclamation approval.

3 (b) Except as provided in subsection 5(d), Reclamation shall not reduce the
4 annual quantity of Substitute Water made available under this contract, irrespective of any reductions
5 imposed on CVP water right settlement contractors or CVP water service contractors.

6 (c) If the Contractor desires to transfer Substitute Water for use outside the area
7 described in subsection (a) above, the proposed transfer must be determined by Reclamation to be in
8 compliance with the applicable CVP water right permit(s) and all applicable Federal and State laws,
9 including, but not limited to, the National Environmental Policy Act, 42 USC
10 Section 4321, et seq.; and the Endangered Species Act, 16 USC Section 1531, et seq.. All costs
11 associated with such compliance shall be the responsibility of the Contractor.

12 (d) If the place of use of transferred Substitute Water is outside Shasta County,
13 the maximum quantity of Substitute Water available to the Contractor for use within the Contractor's
14 boundaries during the term of such a transfer shall be reduced by 1.786 acre-feet for each acre-foot of
15 Substitute Water transferred outside Shasta County.

16 (e) The Contractor, hereby assigns to Reclamation, on behalf of the United
17 States, any and all rights and claims of right it has to divert any water from Clear Creek in excess of the
18 5,100 acre-feet per Year for which Substitute Water shall be made available in accordance with the
19 terms and conditions of this contract.

20 TIME FOR EXCHANGE OF WATER / POINT OF DELIVERY FOR SUBSTITUTE WATER

21 4. (a) Substitute Water shall be made available to the Contractor and/or its

- 1 designee(s) during each Year at existing CVP facilities located in Shasta County or at such point or
- 2 points of delivery mutually agreed to in writing by Reclamation and the Contractor.

1 (b) On or before March 1 of each Calendar Year, and at such other times as
2 Reclamation deems it necessary, the Contractor shall submit to Reclamation, a written schedule,
3 satisfactory to Reclamation, showing the times, quantities, points of diversion, and places of use of
4 Substitute Water the Contractor wants Reclamation to make available to the Contractor and/or its
5 designee(s) pursuant to this contract.

6 (c) Reclamation shall make Substitute Water available to the Contractor and/or
7 its designee(s) in accordance with the initial schedule submitted by the Contractor pursuant to
8 subsection (b) above, or any revision(s) thereto, the Contractor submits to Reclamation, and
9 Reclamation approves at least seventy-two (72) hours prior to the date(s) on which the requested
10 change(s) is/are to be implemented.

11 (d) Any Substitute Water not diverted during the month in which it is made
12 available may not be diverted during any other month.

13 MEASUREMENT OF WATER

14 5. (a) The Substitute Water to be made available to the Contractor pursuant to this
15 contract will be measured with equipment owned, installed, operated, and maintained by the Contractor
16 or other parties acceptable to Reclamation. Upon request by Reclamation, the Contractor will
17 investigate the accuracy of such measurements, and any errors discovered will be promptly corrected.
18 Contractor hereby grants to Reclamation such access as may be required over and upon Contractor's
19 lands and facilities in order to make such investigation.

20 (b) The Contractor shall provide Reclamation with monthly accounting records
21 acceptable to Reclamation that identify the quantities of Substitute Water the Contractor and/or its

1 designee(s) diverts pursuant to this contract. Reports will be submitted to Reclamation by the 10th day
2 of each month.

3 (c) Reclamation shall not be responsible for the control, carriage, handling, use,
4 disposal, or distribution of water beyond the delivery points, and the Contractor shall hold Reclamation
5 harmless on account of damages or claim of damages of any nature whatsoever for which there is legal
6 responsibility, including property damage, personal injury, or death arising out of or connected with the
7 control, carriage, handling, use, disposal, or distribution of such water.

8 (d) Reclamation may temporarily discontinue or reduce the quantity of water to
9 be furnished to the Contractor as herein provided for the purposes of such investigation, inspection,
10 maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the
11 furnishing of water to the Contractor, but so far as feasible, Reclamation will give the Contractor as
12 much advance notice as reasonably possible, given the circumstances, of such temporary
13 discontinuance or reduction, except in case of emergency, in which case no notice need be given:
14 Provided, however, That Reclamation will use its best efforts to avoid any discontinuance or reduction
15 in service for a period longer than three (3) days. Upon resumption of service after such reduction and
16 if requested by the Contractor, Reclamation will attempt to deliver the quantity of water, which would
17 have been furnished hereunder in the absence of such contingency.

18 CONSTRUCTION OF CONTRACT

19 6. This contract shall never be construed as a conveyance, abandonment, or waiver of
20 any water right, or right to the use of water, by the Contractor, or as conferring any right whatsoever
21 upon any person, firm, corporation, or governmental agency not a party to this contract, or to affect or

1 interfere in any manner with any right of the Contractor to the use of the waters of Clear Creek, except
2 to and in favor of Reclamation to the extent herein specifically provided.

3 QUALITY OF WATER

4 7. (a) CVP facilities used to make Substitute Water available to the Contractor
5 pursuant to this contract shall be operated and maintained to enable the United States to make
6 Substitute Water available to the Contractor in accordance with the water quality standards specified in
7 subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by
8 Section 101 of the Act of October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The
9 United States is under no obligation to construct or furnish water treatment facilities to maintain or to
10 better the quality of Substitute Water furnished to the Contractor pursuant to this contract. The United
11 States does not warrant the quality of Substitute Water made available and delivered to the Contractor
12 pursuant to this contract.

13 (b) The operation and maintenance of CVP facilities shall be performed in such
14 manner as is practicable to maintain the quality of raw water made available through such facilities at the
15 highest level reasonably attainable as determined by Reclamation.

16 WATER AND AIR POLLUTION CONTROL

17 8. The Contractor, in carrying out this contract, shall comply with all applicable water
18 and air pollution laws and regulations of the United States and the State of California and shall obtain all
19 required permits or licenses from the appropriate Federal, State, or local authorities.

1 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

2 9. The expenditure or advance of any money or the performance of any obligation of
3 the United States under this contract shall be contingent upon appropriation or allotment of funds.
4 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
5 under this contract. No liability shall accrue to the United States in case funds are not appropriated or
6 allotted.

7 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

8 10. (a) The provisions of this contract shall apply to and bind the successors and
9 assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein
10 shall be valid until approved in writing by Reclamation.

11 (b) The assignment of any right or interest in this contract by either party shall not
12 interfere with the rights or obligations of the other party to this contract absent the written concurrence
13 of said other party.

14 OFFICIALS NOT TO BENEFIT

15 11. No Member of or Delegate to Congress, resident commissioner, or official of the
16 Contractor shall benefit from this contract other than as a water user or landowner in the same manner
17 as other water users or landowners.

18 NOTICES

19 12. Any notice, demand, or request authorized or required by this contract shall be
20 deemed to have been given to Reclamation when mailed, postage prepaid, or delivered to the Area
21 Manager, Northern California Area Office, Bureau of Reclamation, PO Box 988, 1140 West Wood
22 Street, Willows, California, 95988, and to McConnell Foundation, when mailed, postage prepaid, or
23 delivered to, PO Box 492050, 800 Shasta View Drive, Redding, California, 96049-2050. The
24 designation of the addressee or the address given above may be changed by notice given in the same
25 manner as provided in this Article for other notices.

1 IN WITNESS WHEREOF, the parties hereto have signed their names as of
2 the date and year first above written.

3
4 UNITED STATES OF AMERICA

5 By: _____
6 Regional Director, Mid-Pacific Region
7 Bureau of Reclamation

8 THE MCCONNELL FOUNDATION

9 By: _____
10 President

11 ATTEST:
12

13 By: _____
14 Secretary

15 (I:Mf4.wpd)